

# Coastal Zone Management Act Section 306A Guidance

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# **1 Introduction**

## **1.1 Purpose and Authority**

This guidance is issued by the Office for Coastal Management (OCM), National Ocean Service, National Oceanic and Atmospheric Administration (NOAA) to explain how aspects of Section 306A of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1451-66, that are not addressed elsewhere are implemented.

This guidance describes procedures NOAA will apply to states, commonwealths, and territories (hereafter referred to as “states”) with federally approved coastal management programs for developing Section 306A projects and applying for funding, including procedures for states’ negotiation of Section 306A projects with other state, territorial, tribal, and local governments, regional organizations, and others. The guidance includes descriptions of CZMA Section 306A eligibility requirements, allowable uses of Section 306A funds, Section 306A application requirements, data and information necessary to fulfill NOAA’s environmental compliance requirements, and supporting documentation necessary for NOAA to effectively review and approve Section 306A projects. This guidance supersedes all previous guidance regarding Section 306A.

The authority for this guidance is the Coastal Zone Management Act, 16 U.S.C. 1451-66, implementing regulations at 15 C.F.R. Part 923; 2 C.F.R. 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, adopted by the Department of Commerce through 2 C.F.R. 1327.101; and NOAA and National Ocean Service Environmental Compliance Policies. These sources, along with this guidance and any funding allocation or funding directives NOAA may periodically provide, are the primary resources for implementation of Section 306A projects.

State coastal management programs should work with their OCM coastal management specialist or site liaison for any assistance needed to apply for Section 306A funding, and if necessary, states can also contact the Communities Program Manager in the Office for Coastal Management.

## **2 Section 306A Project Eligibility**

### **2.1 General Eligibility**

Section 306A of the Coastal Zone Management Act provides state coastal management programs with federal funds to obtain on-the-ground results from state coastal management activities. Section 306A projects must be directly linked to a state coastal management

program. To accomplish this linkage, OCM strongly encourages states to educate coastal management program partners on this Section 306A guidance and the coastal management program's own priorities either through directed outreach and training and/or in the form of Request for Proposals for purposes of project solicitation from local, regional, and other governmental partners. To the extent that others are involved in Section 306A project selection (e.g., state advisory council), those entities should also be familiarized with the guidance and coastal management program priorities. A single state agency shall administer both CZMA Sections 306 and 306A in order to plan activities and projects that complement each other and result in the advancement of a state's coastal management program goals.

Generally, states are eligible for Section 306A funds if the state has a federally approved coastal management program and the state coastal management program is making satisfactory progress in implementing its NOAA-approved program. If OCM determines that a state coastal management program is not making satisfactory progress, OCM will use its discretion to suspend or terminate Section 306A eligibility until the problems are remedied, consistent with due process requirements in 15 C.F.R. 923 and 2 C.F.R. 200. A Section 306A project must also meet one of the section 306A objectives, and the funds must be used for one of the Section 306A allowable uses, as described in this guidance.

The amount of funds spent on any single Section 306A project, and the amount spent on all Section 306A projects from a particular CZMA Section 306/306A grant, is negotiated with OCM. OCM approval depends on the requirements of this guidance and other state coastal management program needs, including, for example, state coastal management program Section 306 implementation needs and CZMA Section 312 evaluation necessary actions and recommendations. The CZMA restricts a state coastal management program from using more than 50 percent of its Section 306/306A grant for Section 306A low-cost construction projects. CZMA § 306A(c)(2)(B).

NOAA requires state applicants for funding to submit a 306A questionnaire and other supporting documentation described in this guidance to assure compliance with program requirements, as described throughout this guidance.

## **2.2 Objectives**

The CZMA requires a Section 306A project to meet one or more of the following objectives:

### **2.2.1 Preservation or Restoration**

Preservation or restoration of specific areas that (a) are designated under a state's coastal management program as required by CZMA Section 306(d)(9) because of their conservation, recreational, ecological, or esthetic values, or (b) contain one or more coastal resources of national significance, or (c) for the purpose of restoring and

enhancing shellfish production by the purchase and distribution of cultch material on publicly owned reef tracts. CZMA § 306A(b) (1).

For projects not clearly meeting the criteria in (a)-(c) above, OCM recognizes the importance of the entire coastal zone. Most state coastal programs (inclusive of their networked partners) have developed plans and strategies to address specific areas for particular management needs. OCM will consider such plans and strategies to determine if the proposed project is in fact addressing conservation, recreational, ecological, or esthetic values. For purposes of Section 306A projects, OCM encourages the coastal management program to consider areas and specific properties identified in NOAA approved Coastal and Estuarine Land Conservation Program Plans (CZMA Section 307a) or other state and regional plans.

### **2.2.2 Redevelopment**

Redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated under Section 306(d)(2)(C) in the state's management program as areas of particular concern. CZMA § 306A(b)(2).

For purposes of Section 306A projects, in addition to those areas explicitly identified in a state's program as "areas of particular concern," OCM interprets "urban waterfronts and ports" to include any waterfront areas, such as working waterfronts, identified by state coastal management programs for planning, management, or other support, including expenditures consistent with this guidance because of their coastal-related values or characteristics, or because they may face pressures which require detailed attention beyond the general planning and regulatory system which is part of the state coastal management program. These may be areas requiring or benefitting from new strategies or regulatory approaches applicable only to the area of particular concern, or areas needing increased intergovernmental coordination, technical or planning assistance, enhanced public expenditures, or additional public services and maintenance. See Special Management Areas, Coastal Zone Management Program Regulations, 15 C.F.R. Sec. 923.20-923.25.

### **2.2.3 Access**

Provision of access to public beaches and other coastal area and coastal waters in accordance with the planning process required under Section 306(d)(2)(G). CZMA § 306A(b)(3).

Generally "other coastal areas" includes all areas within a state's coastal zone boundary. In very limited circumstances, projects outside of the CZ boundary may be considered for Section 306A funds (see Section 2.4 of this Guidance, under "Geography").

#### **2.2.4 Coordination**

The development of a coordinated process among state agencies to regulate and issue permits for aquaculture facilities in the coastal zone. CZMA § 306A(b)(4).

This provision was added in 1996 for aquaculture planning and regulation processes. The section does not authorize the use of Section 306A funds for the construction of aquaculture projects.

While Section 306A of the CZMA clearly authorizes the use of funds for aquaculture regulatory process development, such projects may also be eligible for funding under other CZMA Sections (i.e., 306, 309, and 310).

### **2.3 Allowable Uses**

The use of Section 306A funds is limited to:

#### **2.3.1 Interest in Land**

The acquisition of fee simple or other interests in land, e.g., purchasing an easement for a public right-of-way to the beach or purchasing an ecologically important area to preserve as an area of particular concern. CZMA § 306A(c)(2)(A).

306A funds may be used to acquire land, or interests in land, that support the goals of the coastal management program and otherwise meet NOAA's requirements for land conservation. Coastal habitat, public access sites, or parkland holdings are examples of target properties that may be supported by Section 306A funds.

#### **2.3.2 Low-Cost Construction**

Low-cost construction projects consistent with the purposes of CZMA § 306A, including but not limited to paths, walkways, fences, fishing piers, beach walkovers, boardwalks, boat ramps, Americans with Disabilities Act improvements to public access facilities, viewing platforms, coastal habitat restoration, invasive species removal, living shorelines designed to increase resilience and enhance ecological integrity (as defined further in Section 2.8 of this guidance), and the rehabilitation of historic buildings and structures. CZMA § 306A(c)(2)(B).

Not all low-cost construction projects designed to enhance public access to coastal zones or restore coastal resources will be eligible for funding under this section. For example, habitat restoration projects that rely primarily on hard structure elements would not be eligible for funding.

### **2.3.3 Revitalization**

The revitalization of deteriorating or underutilized working and urban waterfront ports for:

- i. the rehabilitation or acquisition of piers for public use, including compatible commercial activity;
- ii. the establishment of shoreline stabilization measures including the installation or rehabilitation of bulkheads for the purpose of public safety, or increased public access and use of urban waterfront areas; and
- iii. the removal or replacement of pilings where such action will provide increased recreational use of urban waterfront areas. CZMA § 306A(c)(2)(C).

### **2.3.4 Engineering Designs and Reports**

Engineering designs, specifications, and other appropriate reports related to the above (including aquaculture processes). CZMA § 306A(c)(2)(D).

Section 306A funds may be used to develop engineering designs, specifications, or other site assessments needed to scope and implement low-cost construction projects. In some cases, these activities may be supported by funds from Sections 306 (e.g., engineering activities that do not have an earth-moving component) or 309 (e.g., development of aquaculture strategies or processes). In instances where the coastal management program is very likely to participate in the implementation of the design, coastal management programs should submit engineering and other design-focused tasks as 306A projects. This may lead to efficiencies in approval of later project stages.

### **2.3.5 Educational, Interpretive, Management**

Educational, interpretive, and other management costs (including aquaculture processes and signage). CZMA § 306A(c)(2)(E).

Section 306A funds may be used to support educational, interpretive, and management costs, including those that are ancillary to new low-cost construction projects. Replacement signage or signage on existing non-historic structures previously funded by NOAA may be eligible for Section 306 project funds; however, new signage that is to be erected in a new location should be submitted as 306A work. As is noted in 15 C.F.R. 923.93(c), when in doubt as to the appropriate section of the CZMA under which to request funding, states should consult with OCM. Other educational, interpretive, and management costs that are not associated or otherwise bundled with Section 306A projects may be submitted as Section 306 projects.

## **2.4 Public Benefit Standards**

Public benefit requirements for Section 306A projects are:

### **2.4.1 Publicly-Owned Land**

Section 306A funds should only be used for projects on publicly owned or leased land, or land for which an easement is obtained. For projects that are partially or fully undertaken in submerged or tidal public trust lands, adjacent uplands should be publicly held and accessible to the public, in most situations.

### **2.4.2 Private Property Restriction**

Section 306A funds are for public benefit and may not be used to improve private property or for other private enterprises (including non-profit property or enterprises). See also Section 2.4.7.

### **2.4.3 Open to the Public**

A Section 306A public access facility must be open to the general public. Facilities that restrict use to specific persons or residents of a community are not eligible for Section 306A funding. Access may be limited or controlled in an equitable manner at certain times for safety or resource protection reasons or for other good and reasonable cause such as: to accommodate special events, educational outings (e.g., a school group), or for scientific research (e.g., archaeological excavation).

### **2.4.4 User Fees**

In general, user fees are discouraged and should not be charged to access Section 306A projects. If user fees are necessary, the fee must be described and justified in the Section 306A Project Questionnaire submitted to OCM and must be used to operate or maintain the site funded via Section 306A. All user fees, income, or other revenues derived from a Section 306A project shall revert to the maintenance or management of either the federally funded Section 306A project or, if the Section 306A project is part of a larger public project, the larger public project. The above guidance on user fees does not apply to Section 306A projects that are implemented on properties already subject to user fees, such as state parks, wildlife management areas, and other public spaces already subject to daily or annual passes or access fees. OCM will rely on 2 CFR 200.80 and 200.307 to determine if any proposed user fee is program income for purposes of award administration.

#### **2.4.5 Non-Discriminatory Access**

Rules regarding access to property acquired and/or developed with NOAA assistance may not discriminate based on residence, such as preferential reservation, membership or annual permit systems. Reasonable differences in admission and other fees may be allowed; however, fees charged to nonresidents cannot exceed twice the amount charged to residents. If there is no charge for residents, nonresident fees cannot exceed fees charged for residents at comparable state or local public facilities. Reservation, membership or annual permit systems available to residents must also be available to nonresidents, and the period of availability must be the same for both residents and nonresidents. OCM may require additional information on the necessity or reasonableness of a fee and may deny the use of a user fee.

#### **2.4.6 Acquisition, Lease, or Easement**

All land acquisitions should be in perpetuity. All leases and easements should be in perpetuity. However, for non-acquisition projects, a lease or easement shall at a minimum be for the expected life of the project (as defined by the coastal management program in consultation with local partners and OCM, but for a minimum of 20 years). OCM will review leases and easements conveying property to public entities to ensure that the public interest is adequate and consistent with Section 306A requirements. For example, OCM will review and approve reversionary clauses contained in leases or easements prior to project approval. For land acquisition projects (fee-simple or easement interest), the recipient must record deed restriction language substantially to the effect of: "This property has been acquired [in part] with funds from federal financial assistance award NAXxNOS419xxxx through Section 306A of NOAA's Coastal Zone Management Program. Title to the property conveyed by this deed shall vest upon acquisition in the [name of grant recipient or other appropriate public agency] subject to the conditions that the property shall be managed consistent with the purposes for which it was acquired through the Coastal Zone Management Act. The [recipient/public agency] must not dispose of, exchange, encumber its title or other interests in, or convert the use of this property without the approval of NOAA or its successor agencies."

#### **2.4.7 Incidental Private Benefits**

Secondary or incidental benefits to commercial, private, or non-profit entities that accrue from Section 306A projects may be allowed so long as the secondary or incidental commercial, private, or non-profit benefits do not interfere with the primary purpose of the project or requirements of this guidance, and public uses and benefits are not diminished.

#### **2.4.8 Change of Purpose**

If a construction project ceases to be used for the approved purpose at any time during the life of the project, NOAA will follow procedures in 2 C.F.R. 200 and the award terms. For land acquisition projects, if the property ceases to be used for the original purpose, the state coastal management program must obtain disposition instructions from the NOAA Grants Officer consistent with 2 C.F.R. 200.311(c) and the terms of the award.

#### **2.4.9 Non-Profit Facilitation**

Non-profit organizations can facilitate the implementation of Section 306A projects; however, Section 306A funds must not be directly allocated to a non-profit organization as a sub-awardee, and non-profit organizations cannot acquire interests in land with Section 306A funds. The term “non-profit organization” includes land trusts, development corporations/quasi-governmental units, and other non-public not-for-profit entities.

A state coastal management program, or other public entity, may enter into a partnership with a non-profit organization to purchase property, for preservation purposes only, so long as the federal Section 306A funds are allocated to the public entity and the public entity retains ownership (title) and control of the property. If a land trust is involved, the land trust may retain an interest in the property consistent with the purpose of preserving coastal uses or resources, e.g., a conservation easement, but not fee simple ownership.

No lands or easements already possessed by a public entity can be funded via Section 306A. So, Section 306A funds may not be used to reimburse public entities for properties acquired prior to open award periods.

#### **2.4.10 New Access**

When Section 306A funds create new access, either through the building of structures or acquisition of new access sites, the benefits provided by those activities (e.g., new or enhanced public access opportunities, habitat conservation) should remain in perpetuity, even if the specific structures or enhancements do not.

#### **2.4.11 Useful Life**

OCM recognizes that determining the “useful life” of low-cost construction projects is highly variable for different types of projects, materials, geographies, and site exposures. Consistent with past program guidance, OCM recommends that coastal management programs target at least 20 years, when feasible. When enhancing access through structural improvements, such as boardwalks, launches, docks, piers, or

stairways, the coastal management program has the duty and discretion to ensure that those improvements are maintained for and, as circumstances and resources allow, extended beyond their useful life, as defined by the coastal management program based on local conditions. Coastal management programs are encouraged to seek out local partners that intend, and have means to maintain low-cost structures built with Section 306A financial support by providing for operations and maintenance costs. In the event that Section 306A enhancements become structurally unsound and/or otherwise unsafe for public use, the coastal management program should work with the local partners to remove, repair to safe standards, condemn, or otherwise reduce the risk posed by the structures to the public.

Structures lost due to natural hazards, such as catastrophic weather events, would not necessarily be expected to be repaired or replaced to pre-storm conditions; however, OCM would again encourage that the original benefits for which the project was pursued be maintained. Recipients should follow the insurance provisions in 2 CFR 200.310, requiring that real property acquired with federal funds have equivalent insurance coverage to real property acquired with non-federal funds.

E.O. 11988 requires federal agencies to avoid to the extent possible adverse impacts associated with the modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. When contemplating repair or replacement of structures lost during severe weather or due to other coastal hazards (e.g., long-term erosion), recipients should consider whether replacing “same with same” is consistent with the intent of E.O. 11988 with respect to avoiding adverse impacts, and with the guidance above to ensure that structures last as long as intended and are resilient to flooding and other coastal hazards over their useful life.

#### **2.4.12 Environmental Justice**

Executive Order 12898 directed federal agencies to develop environmental justice strategies to help federal agencies address disproportionately high and adverse human health or environmental effects of their programs on minority and low-income populations, and thus NOAA must ensure Section 306A projects will not have disproportionately adverse economic or environmental impacts on minority groups, low-income groups, or Native American tribes. A disproportionately adverse effect on a minority group, low income population, or Native American tribe means the adverse effect is predominantly borne by such population or is appreciably more severe or greater in magnitude on the minority group, low-income population, or Native American tribe than the adverse effect suffered by the general population (i.e., the non-minority, non-low-income, non-tribal populations). Disproportionate environmental impacts are factual determinations made on a case by case basis, and, in the case of tribes, are determined based on government-to-government consultation. The risk of disproportionate impacts could arise for projects in the vicinity of a minority group, low-

income population, or Native American tribe, such that any effects such as construction noise, pollution runoff, or obstruction of view sheds could disproportionately impact these communities. Other examples could include increased vehicular traffic (added noise, air pollution) directly through a low-income neighborhood to access a newly created coastal access site or increased noise and activity associated with a publicly accessible land acquisition adjacent to a sacred tribal site.

#### **2.4.13 Accessibility Standards**

All projects that provide access, such as piers, platforms, and trails, must comply with applicable accessibility standards as required by the guidelines contained here:

<https://www.access-board.gov/guidelines-and-standards>.

See also Department of Justice information and technical assistance at:

[https://www.ada.gov/2010ADASTandards\\_index.htm](https://www.ada.gov/2010ADASTandards_index.htm).

#### **2.4.14 Environmental Award Terms**

Generally applicable environmental requirements related to financial assistance projects funded by NOAA are described in the Department of Commerce Financial Assistance Standard Terms and Conditions, Section G.04. (March 2017), and any subsequent amendments.

### **2.5 Project Cost**

In recognition of the congressional intent to limit Section 306A projects to “low-cost construction” that is not “capital intensive,” OCM will use the following financial criteria to inform project eligibility. While limited exceptions may be considered, the vast majority of approved Section 306A projects will be expected to meet these criteria.

NOAA’s recommended funding amounts for a Section 306A project are up to \$200,000 federal share, with a recommended total project cost up to \$400,000, for all project types except land acquisition. For land acquisition, OCM will exercise greater flexibility, using \$500,000 as the general maximum federal Section 306A funding amount (recommended total project cost not to exceed \$1,000,000). The aforementioned land acquisition dollar thresholds are guidelines, and the OCM Communities Program Manager may exercise flexibility beyond these thresholds depending on the particular land acquisition scenario. All dollar thresholds are presented in 2019 current value and will be in effect until adjusted by NOAA and provided to states via the Coastal Program’s annual funding guidance. Funding criteria adjustments will be made using the U.S. Department of Labor Consumer Price Index.

## 2.6 Project Scale

With regard to Section 306A projects implemented as part of, or to complement a larger project, such as a major waterfront redevelopment effort or larger, costlier land acquisition for which Section 306A funds provide a small financial contribution to a sub-component of, or addition to the overall project, OCM is not proposing a maximum dollar amount for the broader effort. OCM will exercise discretion to ensure the Section 306A component of larger projects is low-cost, non-capital intensive construction or otherwise appropriately aligned to projects such as land acquisitions. These contributions should be discrete and separable from the broader, longer-range efforts. For example, the purchase of plant material costing \$40,000 for a mile-long shoreline restoration project costing \$2,000,000 that relies heavily on capital equipment is not an eligible use of Section 306A funds, because the size and scale of the overall project would be inconsistent with 306A objectives. However, signage or site improvements for past Coastal and Estuarine Land Conservation Program acquisitions, or the installation of a public access boat launch within a broader urban waterfront redevelopment project, could be eligible, provided the specific Section 306A project is consistent with these guidelines.

## 2.7 Geography

Under very limited circumstances, OCM may consider approval of Section 306A projects that fall outside of the approved coastal zone boundary of a coastal management program. Approval of such projects should be viewed as the exception. State coastal management programs are not encouraged to seek projects outside of their designated state coastal zone boundaries. However, if proposed, the primary purpose of such “inland” projects must further the preservation, conservation, management, or use of the state’s coastal zone and address § 306A objectives for the coastal zone. Projects that satisfy this requirement may be considered if:

- i. The project location is both within and outside the state’s coastal zone boundary, where the portion of the project occurring inland of the coastal zone boundary is needed to meet or enhance the objective of §306A project in the coastal zone;
- ii. There is not a reasonably available location within the coastal zone to provide a public access point (e.g. a boat ramp or safe harbor for boats during a coastal storm), but there is an available inland location within that same state that provides public access to waters of the coastal zone;
- iii. Acquiring land inland of the coastal zone for preservation or conservation will enhance uses or resources of the coastal zone (e.g. protecting anadromous fish spawning habitat or other species ecologically or economically important for the coastal zone); or
- iv. Redeveloping an urban or working waterfront inland of the coastal zone will provide access to and from the coastal zone for recreational, commercial, or safety purposes (e.g., to provide safe harbor or harvest landing opportunities for commercial fishing vessels operating in the coastal zone).

## **2.8 Criteria for Coastal Restoration Projects, Including Tidal Wetlands and Living Shorelines**

Congress declared that Section 306A projects will not be capital intensive, but instead be minor in scope, and that Section 306A funds will not be used to finance large-scale erosion-prevention structures (H.R. Rep. No. 1012, 96th Cong., 2d Sess. at 45 (1980) (House Report)). Consistent with this directive, it is OCM's policy that Section 306A funds will not be used for beach renourishment or projects that are predominantly hard structure erosion control projects. Small-scale shoreline stabilization structures, such as wetlands and living shorelines, consistent with NOAA's guidelines for living shorelines and related nature-based infrastructure, may be eligible for funding.

With very limited exceptions, all proposed wetlands and living shorelines projects should be designed to qualify for a United States Army Corps of Engineers (USACE) Nationwide Permit (NWP 27 for wetlands and 54 for living shorelines) or approved State Programmatic General Permit by the USACE, including any regional conditions imposed by individual district. Note that particular USACE districts may modify, suspend, or revoke one or more NWPs in a particular region. With regard to wetlands projects, in addition to qualifying for a Nationwide/General Permit issued by the USACE, projects must meet the scope and scale criteria described in Section 2.2 below. For living shorelines, exceptions for projects not qualifying for a Nationwide/General Permit, at OCM's discretion, will only be considered when a project meets all state criteria used to define a living shoreline, including any necessary state-specific permit requirements, and meets all other relevant project criteria contained in this guidance including size and scale criteria. OCM recognizes that some projects may require multiple USACE authorizations.

Note that while USACE has conducted an environmental assessment and cumulative effects analysis to meet its own National Environmental Policy Act (NEPA) obligations for the Nationwide Permits, NOAA must still conduct its own environmental compliance reviews to fulfill its own statutory and regulatory compliance obligations.

Additional information on the USACE's NWPs may be found here:

<http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

OCM will also apply the following criteria in assessing wetland and living shorelines projects or associated planning and design activities: the project is on public land; the state coastal management program can show a substantial public benefit (e.g., the structure protects public investment that cannot be feasibly or technically relocated, protection of a historic structure or other important coastal resources); these benefits substantially outweigh the costs; the project is not designed to be temporary in nature; the project is designed to last in perpetuity or for a minimum of 20 years (as further defined in this guidance); and the project meets other Section 306A requirements.

NOAA discourages the use of Section 306A funds for projects that are devised and implemented in response to regulatory and/or permit requirements if they are not planned and designed to also meet a coastal program goal. However, such projects are not prohibited as long as they also meet the Section 306A criteria included in this guidance.

## **2.9 Land Acquisition**

Land acquisition projects must include a complete, self-contained appraisal prepared to federal appraisal standards (i.e., consistent with Standards 1 & 2 of the Uniform Standards of Professional Appraisal Practice (USPAP)); evidence of title for each proposed acquisition; a legal survey of the property; contract for purchase, sale, or option agreement; a willing seller letter; and copies of any easements or other use agreements to be placed on the property. Appraisals and title evidence should be current, meaning no more than one year old. OCM may require more rigorous review appraisals for complex or larger acquisitions, or those that exceed the monetary threshold noted in Section 2.5.

# **3 National Environmental Policy Act and Environmental Compliance**

## **3.1 NOAA's NEPA and Environmental Compliance Policies and Procedures**

The National Environmental Policy Act (NEPA), signed into law on January 1, 1970, 42 U.S.C. 4321, et seq. established a national policy requiring all federal agencies to effectively consider the environmental impacts of their actions prior to making a decision. The range of actions covered by NEPA is broad and includes projects or programs that are entirely or partially funded, assisted, regulated, conducted, approved, or permitted by a federal agency. The NEPA process to be followed by all federal agencies is specified in the Council on Environmental Quality regulations at 40 CFR 1500-1508. These regulations also require each federal agency to develop their own NEPA policies and procedures.

NOAA's environmental review must also comply with several executive orders, including "Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 Floodplain Management; and 11990, Protection of Wetlands."

NOAA's NEPA policies and procedures are contained in NOAA Administrative Order 216-6A (NAO 216-6A), and this order's authorized companion manual, available at: [www.nepa.noaa.gov](http://www.nepa.noaa.gov). In addition, NOAA's National Ocean Service (NOS) finalized its Environmental Compliance Policy in May 2016, and OCM finalized its Environmental Compliance Program Policy in September 2016. These policies established a compliance program for NOS and program offices, defined specific roles and responsibilities for leadership and staff, and defined the requirements NOS program offices are expected to meet for greater accountability and consistency.

For Section 306A projects, funding preference will be given to those projects for which NOAA's NEPA review results in a categorical exclusion (CE), or in very limited circumstances an Environmental Assessment (EA)/Finding of No Significant Impact.

### **3.1.1 Categorical Exclusion**

A categorical exclusion (CE) is a category of actions particular to individual agencies that the agency has determined does not individually or cumulatively have a significant effect on the quality of the human environment. A CE is a form of NEPA compliance, without the detailed analysis that occurs in an Environmental Assessment (EA) or Environmental Impact Statement (EIS). A CE may only be applied to a proposed action when:

- i. The proposed action falls within one of the CE categories listed in Appendix E of NOAA's Final Companion Manual: "Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities" (<http://www.nepa.noaa.gov>);
- ii. The proposed action is not part of a larger action, and can therefore be reviewed independently from other actions under NEPA; and
- iii. There are no extraordinary circumstances that may require further analysis in an EA or EIS. Extraordinary circumstances are situations for which NOAA has determined further NEPA analysis may be required because they are circumstances in which a normally excluded action may have significant effects (see Appendix IV). The mere presence of one or more extraordinary circumstances does not preclude the use of a CE. A review of extraordinary circumstances focuses on the action's potential effects and considers the significance of those effects in terms of both context (consideration of the affected region, interests, and resources) and intensity (severity of impacts).

A full list of NOAA's CEs can be found in Appendix E of NOAA's Companion Manual. Only CEs found in the Companion Manual may be applied to a project activity. This document also includes a range of information regarding NOAA's NEPA agency-wide guidance and implementation. Appendix IV provides an example of how NOAA evaluates whether a CE could be applied for particular project.

If NOAA determines that the use of a CE is appropriate, this is documented in a memorandum that is signed by the Office Director, or delegated to the Deputy Director, for the original award. Environmental compliance review memos are developed for subsequent award action requests and can be signed by the OCM NEPA/Environmental Compliance Coordinator, as required by the NOS and OCM policies. The CE memo and subsequent compliance review memos must also document the status of compliance efforts for all applicable regulations, Executive Orders, and policies.

### **3.1.2 Environmental Assessment and Finding of No Significant Impact**

If a CE is not applicable, NOAA must prepare either an EA or an EIS for the proposed action. An EA is appropriate to analyze actions that are not subject to CEs, not covered in an existing environmental document, and are not normally subject to an EIS. An EA is used to determine if the action would have significant effects; if so, an EIS must be prepared. Significance depends on the context (e.g., location, time of year, species present, etc.) and intensity (e.g., size of project, effects on species) of the action. If the agency determines that the action will not have significant environmental impacts, the agency will issue a Finding of No Significant Impact (FONSI).

NOAA may adopt all or portions (e.g., specific analyses, appendices, or specific sections) of an EA or EIS prepared by another federal agency if the action addressed in the adopted document (or portion) is substantively the same as that being considered or proposed by NOAA and if NOAA determines that the document (or portion) meets all NEPA requirements. In order to adopt another agency's document, NOAA must determine that the other agency's EA or EIS (or portion thereof) fully covers the scope of NOAA's proposed action and alternatives and environmental impacts. If NOAA elects to adopt another agency's EA or EIS, it must prepare and sign its own FONSI or record of decision (ROD).

NOAA may incorporate material, including state environmental reports or analysis, into a NEPA document by reference, so long as doing so does not impede agency and public review of the proposed action. The incorporated material must be cited, and its content must be briefly described. The material incorporated by reference must be reasonably available for inspection by potentially interested parties.

Applicants (i.e., the state coastal management program or a sub-awardee of the program) or contractors hired by the applicant or NOAA may prepare EAs. However, in such cases, NOAA must independently evaluate all pertinent environmental issues through an internal review. The FONSI for an applicant-prepared EA must be prepared by NOAA and state that this internal review was performed.

## **3.2 Compliance with Other Environmental Laws**

### **3.2.1 Endangered Species Act**

The federal Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. § 1531, et seq.), aims to protect animal and plant species from extinction and directs all federal agencies to conserve endangered and threatened species and the ecosystems upon which they depend. Under the act, NOAA's National Marine Fisheries Service and the U.S. Fish and Wildlife Service (collectively, the Services) publish lists of endangered, threatened, candidate, and other species with special status under the act. The Services

also have the discretion to identify critical habitat for endangered or threatened species. Section 7 of the ESA requires every federal agency to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species and that it will not result in the destruction or adverse modification of critical habitat for those species. When a federal agency action may affect a protected species or its critical habitat, that agency is required to consult with the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, depending upon the protected species potentially affected. The act authorizes the issuance of an incidental take permit if that taking will not jeopardize the continued existence of a listed species.

### **3.2.2 National Historic Preservation Act**

The National Historic Preservation Act (NHPA) (16 U.S.C. § 470 et seq.), as amended, is intended to provide for the preservation of historic sites, buildings, objects, and antiquities of national significance and promote preservation of historical and archeological resources that might otherwise be lost or destroyed. Under the act and its implementing regulations, federal agencies undertaking an action that potentially affects any property with historic, architectural, archaeological or cultural value that is listed on or eligible for listing on the National Register of Historic Places must comply with specific procedures for consultation with the appropriate state and/or tribal Historic Preservation Officers and others. The regulations place an emphasis on consultation with Indian tribes and Native Hawaiian organizations, in keeping with the 1992 amendments to NHPA. Consultation with an Indian tribe must respect tribal sovereignty and the government-to-government relationship between the federal Government and Indian tribes. Even if an Indian tribe has not been certified by the National Park Service to have a tribal Historic Preservation Officer who can act for the State/Tribal Historic Preservation Officer (SHPO/THPO) on its lands, it must be consulted about undertakings on or affecting its lands on the same basis and in addition to the SHPO. Additionally, NHPA requires consultation with Indian tribes for impacts off of tribal lands, if a tribe attaches religious and cultural significance to historic properties. In addition, Traditional Cultural Properties can be eligible for listing on the National Register. The traditional cultural significance of a historic property is derived from the role the property plays in the historically rooted beliefs, customs, and practices of a community or tribe(s).

### **3.2.3 Executive Order 13175**

Executive Order 13175 reaffirms the federal government's commitment to tribal sovereignty, self-determination, and self-government. Its purpose is to ensure that all Executive departments and agencies consult with Indian tribes and respect tribal sovereignty as they develop policy on issues that impact Indian communities. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) requires

each federal agency to establish procedures for meaningful consultation and coordination with tribal officials in the development of federal policies that have implications for federally recognized tribes. Procedures for formal government-to-government consultation are outlined in the “NOAA Procedures for Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Natives” (also known as the NOAA Tribal Consultation Handbook).

#### **3.2.4 Magnuson-Stevens Fishery Conservation and Management Act**

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.), as amended and reauthorized by the Sustainable Fisheries Act (Public Law 104-297), established a program to promote the protection of essential fish habitat (EFH) for federally-managed species in the review of projects conducted under federal permits, licenses, or other authorities that affect or have the potential to affect such habitat. After EFH has been described and identified in fishery management plans, federal agencies are obligated to consult with the National Marine Fisheries Service with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any EFH. An adverse effect is defined as any impact that reduces quality or quantity of EFH. Consultation is not required for actions that will not adversely affect EFH. The vast majority of Section 306A projects that occur in the water or along the shoreline will require EFH consultation.

#### **3.2.5 National Marine Sanctuaries Act**

Under the National Marine Sanctuaries Act (16 U.S.C. 32 § 1431 et seq.), federal agency actions or private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any National Marine Sanctuary resource are subject to consultation under the National Marine Sanctuary Act. Each federal agency proposing such an action must provide a written statement describing the action and its potential effects on sanctuary resources no later than 45 days before the final approval of the action. In addition, sanctuary permits are required for any actions that is otherwise prohibited by a particular sanctuary regulation.

#### **3.2.6 Marine Mammal Protection Act**

The primary management objective of the Marine Mammal Protection Act (MMPA) (16 U.S.C. § 1361 et seq.), as amended, is to maintain the health and stability of the marine ecosystem, with a goal of obtaining an optimum sustainable population of marine mammals within the carrying capacity of the habitat. The MMPA prohibits the taking of marine mammals in U.S. waters and by U.S. citizens on the high seas, as well as the importation of marine mammals and marine mammal products into the U.S. The act is intended to work in concert with the provisions of the ESA. Agencies may request

authorization from the National Marine Fisheries Service for “incidental,” but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. Regulations adopted under the MMPA restrict harassment, including any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal in the wild by causing disruption of behavioral patterns, including breathing, breeding, feeding, migration, and sheltering.

### **3.2.7 Executive Order 11990 – Protection of Wetlands and Executive Order 11998 – Floodplain Management**

Executive Order 11990 and Executive Order 11988 require federal agencies to avoid the adverse impacts associated with the destruction or loss of wetlands, to avoid construction of facilities or structures in wetlands or floodplains if alternatives exist, and to develop mitigation measures if adverse impacts are unavoidable. E.O. 11988 further requires federal agencies to use best-available information in identifying the floodplain. Flood maps produced by the Federal Emergency Management Agency (FEMA) are commonly available nationwide, showing the current base (1-percent-annual-chance or 100-year) floodplain and, where determined, the 0.2-percent-annual-chance (500-year) floodplain. FEMA’s flood maps do not depict future floodplains or associated hazards, but relevant data and mapping are becoming more readily available from NOAA, other federal agencies, state/local agencies, and research and other nongovernmental organizations. Recipients must, at a minimum, identify the current 100-year floodplain in relation to the proposed project, but are encouraged to consider both current and future coastal hazard risks including flood risks, inundation, erosion, and sea level rise in planning, evaluating, and implementing proposed actions.

Federal agencies are required to notify the public at the earliest possible time a proposed action is considered in a floodplain and/or a wetland and involve the affected and interested public in the decision-making process. This may entail OCM participation in whatever public process the project proponent or state is leading. OCM will review and consider all of the public comment/input that is received. Agencies are encouraged to incorporate public notice with the NEPA process.

### **3.2.8 Coastal Barrier Resources Act**

Projects proposed for funding under section 306A must conform to the requirements of the Coastal Barrier Resources Act (CBRA) (16 U.S.C. § 3501 et seq.), which prohibits federal funding and financial assistance for projects that encourage development within undeveloped coastal barriers identified as units in “Coastal Barrier Resources System (CBRS).” There are two types of units within the CBRS: System Units and Otherwise Protected Areas (OPAs). Within OPAs, federal expenditures are permitted except for

flood insurance. OPAs are denoted with a “P” at the end of the unit number (e.g., “FL-64P”). Thus if a project ends in “P,” no further action is necessary.

If a project is in a System Unit, federal expenditures and financial assistance for projects under the CZMA may be allowed, only after consultation with the U.S. Fish and Wildlife Service (USFWS), as long as the expenditure is consistent with the purposes of the act. The purpose of the act is “to restrict future Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers” in order “to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers.” (16 U.S.C. 3501(b)).

Early coordination by the applicant with the local USFWS Ecological Services Field Office is advisable prior to project submission to OCM. While OCM has the authority to make the final determination if a project is consistent with the purposes of the CZMA and CBRA, the USFWS opinion will be given deference.

The USFWS has developed an interagency CBRA consultation template to help facilitate the process. The template is available for download on the CBRA website at: <https://www.fws.gov/cbra/Consultations.html>. A CBRS mapper and the official maps of the CBRS are also available on the CBRA website at: <https://www.fws.gov/cbra/maps/mapper.html>.

### **3.2.9 Additional Environmental Requirements**

For more information about other mandates, see Appendix B of the Companion Manual and the Department of Commerce Financial Assistance Standard Terms and Conditions, Section G.04. (March 2017).

## **4 Application Timeline and Procedures**

### **4.1 Application Timeline**

NOAA is responsible for completing NEPA and environmental compliance review. Complete and detailed project information from state coastal management programs and any other local project partners is necessary to meet these requirements and to fulfill mutual Coastal Zone Management mission goals. To manage projects effectively, NOAA will apply award terms with the following deadlines in cases where the grant recipient was unable to provide complete information (and receive NOAA approval) at the time of award application.

The deadline for submission of detailed project information, including a complete Section 306A questionnaire, is 180 days (or six months from the time of start of the award) for all Section 306A projects including land acquisitions and easements; however, submission of project

information at or before the time of application submission is strongly encouraged. The exact date will be included as a National Environmental Policy Act/Environmental Compliance (NEPA/EC) special award condition incorporated into the NOAA award offer (i.e., CD-450, CD-451 documents). The target timeline for NOAA review and NEPA determination of such projects is 90 days after the required detailed project information is received. This deadline is applicable for all projects that qualify for a categorical exclusion; however, more time will be necessary for projects requiring an EA. Projects requiring consultations under other acts that have open-ended timelines (e.g., Endangered Species Act or Marine Mammal Protection Act) may require more time to complete the NEPA and environmental compliance determination. The approval or denial of projects requiring an EA is likely to take between 12 and 18 months after all necessary information is secured. Thus, it is essential that recipients strive to provide complete project information as soon as possible, particularly for more complicated construction projects that may require an EA.

Ensuring all Section 306A guidance requirements are met, especially the provision of information necessary for environmental compliance review, **is a shared responsibility between NOAA, state coastal programs, and any other project partners**. Thus, OCM expects to work cooperatively with the recipient and all other project partners to meet these timelines, which reflect uniform administrative requirements for all OCM cooperative agreements. As a result of the NEPA and environmental compliance reviews, OCM may establish conditions for using the funds, e.g., a special award condition (SAC) indicating the recipient must follow requirements identified by other cognizant agencies pursuant to ESA, NHPA, or other mandates.

In addition to the above timelines, recipients requesting award reprogramming (which is always subject to Grants Officer approval) to change approved Section 306A projects or create new Section 306A projects (for open awards already extended) must do so with no less than 18 months remaining in the maximum allowable award period. This requirement should provide sufficient time to complete all required project reviews and approvals for most projects proposed.

<b>Expected Timeline for Complete Section 306A Projects Submitted with Annual Award</b>	
<b>Activity</b>	<b>Timeframe</b>
State submits completed 306A Questionnaire and all related project information as part of draft or final annual CZMA award application.	According to OCM final funding guidance schedule for July 1 and October 1 states.
OCM reviews materials for completeness.	According to OCM final funding guidance schedule for July 1 and October 1 states.

<p>If 306A project is determined to be eligible for funding, and the NEPA review results in a CE determination, and all environmental compliance consultations are complete, no further actions are required.</p>	<p>If all environmental compliance consultations are complete, funds would be available on award start date.</p> <p>If EC is not completed, a SAC is placed on the award to prohibit expenditure of funds on the task until the consultations are complete, including potential additional information needs from the state as questions may arise during consultations.</p>
<p>If 306A project is determined to be eligible for funding and the NEPA and environmental compliance review results in the need for an EA.</p>	<p>12-18 months to complete EA, pending receipt of data and information required to complete the document.</p>
<p>If EA results in FONSI.</p> <p>If EA does not reach FONSI.</p>	<p>Project is approved and implemented by recipient.</p> <p>Project is deemed ineligible for 306A funds and cancelled.</p>

**Expected Timeline for Partially Complete Section 306A Projects Submitted with Annual Award**

<b>Activity</b>	<b>Timeframe</b>
<p>State submits partially completed 306A Questionnaire and related project information as part of draft or final annual CZMA award application.</p>	<p>According to OCM grants schedule for July 1 and October 1 states.</p>
<p>OCM reviews materials for completeness and finds that additional information is necessary to determine whether project can be approved for funding.</p>	<p>According to OCM grants schedule for July 1 and October 1 states.</p>
<p>If 306A project cannot be approved due to insufficient information or insufficient time, OCM will place a SAC on the award indicating what information is needed by a specific date. OCM will work cooperatively with the state and any other partners to secure needed information and complete NEPA determination.</p>	<p>SAC will typically specify that 180 days from the award start date are allotted to secure information necessary to complete NEPA and EC review.</p> <p>If special circumstances warrant additional time, OCM will work with the recipient to devise an appropriate end date for the SAC to be fulfilled.</p>

Upon submission of required information, OCM will make every effort to alert the recipient on the project's eligibility for a NOAA CE and status of necessary compliance reviews.	30 days
When OCM determines that the project should be eligible for a CE, OCM will review the complete project information, conduct necessary environmental compliance and reach a NEPA determination.	90 days  * Consultations with programs not subject to specific deadlines may lengthen the amount of time needed to complete review.
If the project is deemed ineligible, OCM will work with the recipient to determine if changes can be made to the proposed activities.	30 days
If upon review of additional information, OCM determines there is a need to complete an EA, additional time will be allocated to complete the EA.	12-18 months
If EA results in FONSI.	Project is approved and implemented by recipient.
If EA does not reach FONSI.	Project is deemed ineligible for 306A funds and cancelled.

#### 4.2 Information Required in Funding Application

A state coastal management program proposing section 306A projects must include a Section 306A section in its combined Section 306/306A grant application. The application must list the proposed Section 306A projects by name and federal funds for each project or, if individual projects are not identified in the grant application, show the amount of federal funds to be allocated for Section 306A projects. In those cases where complete project information cannot be furnished by the recipient in the original award, as outlined above, OCM will place special award conditions on the individual Section 306A set asides specifying the necessary information and due dates to the recipient. State coastal management programs are expected to follow all NOAA standard award (cooperative agreement) matching requirements. Whenever feasible, OCM prefers 306A projects to be matched 1 to 1 (federal to state/local partner) to demonstrate commitment on behalf of project partners.

The coastal management program must also include a sufficient amount of information to enable OCM to complete its NEPA and environmental compliance review. The information required is that which is requested in the Section 306A Project Questionnaire. Each coastal management program must include the associated project details and information in their

original award application submittal or subsequent project submittal as well as a completed Section 306A Project Questionnaire, including relevant title information for each proposed Section 306A project.

In order to complete its environmental compliance analysis, NOAA requires states to provide detailed information about the project location and environmental conditions, including the presence (or absence) of wetlands and floodplains, rare, declining, or otherwise exceptional habitats, threatened or endangered species, and historical, archeological, or tribal resources at the project site. In addition, NOAA requires information about the time of year, dimensions of the project, methods and materials, and mitigation measures. This information allows NOAA to prepare required analysis to comply with all applicable environmental laws.

As indicated in the 306A Questionnaire, states are asked to include in their application available maps and diagrams of the project site, copies of valid permits and associated conditions, existing NEPA documents from other agencies, and copies of state level consultations (e.g., ESA, NHPA, etc.). With more complete information in the project application, NOAA can complete its NEPA and environmental compliance requirements more quickly and limit duplication of effort. The inclusion of clear and accurate descriptions of proposed project activities will eliminate confusion and avoid unnecessary delays. States are asked not to repurpose language from previous awards unless the planned activities are truly the same. In some cases, this can invite questions or additional analysis that is not warranted for planned activities in the current award.

OCM may also request plans, strategies, or other guidance documents that are being used to identify Section 306A projects. Such documents will be used to determine if cumulative effects of multiple projects over time should be considered during environmental compliance review. States may provide such information in whatever manner is most convenient, such as a link to web-based documents or electronic files.

Proposed projects should provide a description of construction methods, that is, the types of equipment and methods that will be employed for the project and the level of disturbance expected at the site. This information helps OCM evaluate potential environmental impacts of the activity. For example, OCM will need to understand whether a backhoe or heavy dump truck may be needed to construct a proposed bridge or dune walkover, or the anticipated method to drive pilings into submerged lands. If detailed information on construction methods is not available at the time of application, OCM requires the inclusion of a clause in the project description that states a commitment from the coastal management program, or its sub-awardee, to use best management practices as needed during project implementation. The planned use of best management practices is especially important with regard to protected species, sensitive habitats, artifacts and historic sites in carrying out construction activities. OCM is also interested in understanding all best management practices that will be used to avoid introduction of invasive species and to control erosion or other non-point source pollution on site. States should indicate whether management measures associated with CZMA

section 6217 (or similar state BMPs) are being used during construction activities. See Question 1(e) of NOAA's Section 306A Questionnaire.

### **4.3 Supporting Documentation for Questionnaire**

#### **4.3.1 Checklist of Supporting Documentation for Questionnaire**

The information provided by the state will vary depending on the type of Section 306A project. OCM will maintain an administrative record for each Section 306A project, which will be all of the information and memorandums contained in the NOAA Grants Online system. The state coastal management program must retain all project-related information for at least three years after the grant has been closed-out by NOAA as part of the records it maintains under 2 C.F.R. 200.333. OCM reserves the right to require submission of any or all of the information listed below for a project if the complexity of the project or other reasons indicate a need to review the project in more detail. In addition to any other records necessary for programmatic and financial management of the project under 2 C.F.R. 200, the state coastal management program should retain in its files the following information, as applicable (Items (i) through (l) are for land acquisition projects):

- i. A copy of the completed Section 306A project questionnaire.
- ii. Site location map.
- iii. Site plan.
- iv. Title opinion or certification.
- v. All correspondence with federal, state, and tribal fish and wildlife and historic preservation officials, including clearances and determinations received (e.g., state historic preservation officer's clearance)
- vi. Floodplains/Wetlands notice.
- vii. Copies of all required local, state, tribal and federal permits.
- viii. Explanation of Best Management Practices (BMPs).
- ix. Copy of final draft of any conservation easements to be placed on property by third party entities, such as land trusts or matching funding sources.
- x. Appraisal (for land acquisitions).
- xi. Legal property survey.
- xii. Copy of final deed or conservation easement containing the required NOAA deed restriction.
- xiii. Contract for purchase, sale, or option agreement.
- xiv. Willing seller letter.

Each of these items is described below.

#### **4.3.2 Section 306 Project Questionnaire**

The questionnaire is designed to solicit key project related details, including the data and information necessary for OCM to complete environmental compliance review and make an approval determination for the project. Submission of the questionnaire to OCM for review represents an attestation from the state that the information provided is truthful and accurate based on the latest available information to the state coastal management program and other involved entities.

#### **4.3.3 Site Location Map**

The site location map shows the exact location of the section 306A project. The information provided must allow for easy identification of the exact address or location, including the specific boundaries of the project. Acceptable forms of data include, but are not necessarily limited to: a street address, latitude/longitude coordinates, a United States Geological Survey (USGS) quadrangle map (1:24,000 scale) with site depicted, a detailed aerial photo with clear legend and depiction of route to the nearest major road from the project site, a GIS data layer depicting the overall project location and specific construction site if applicable. OCM reserves the right to request specific site location maps if the site location is not readily apparent.

#### **4.3.4 Site Plan**

The site plan is a detailed drawing of the proposed construction project (or other physical alteration or acquisition) on the project site showing the relationship of the project to other facilities and significant natural features (slope, access points, wetlands, dunes, floodplains, etc.) of sufficient detail for NOAA to use in NEPA and environmental compliance review. For compliance with E.O. 11988, applicants should include on site plans the 100-year and/or 500-year floodplains determined by FEMA or from other best-available data (e.g., 100-year flood hazard analyses developed by other federal agencies; future flood elevations or floodplain mapping, where available). Information in narrative form is acceptable when mapping data are not available. The site plan must also show how structures will comply with the requirements of the Americans with Disabilities Act of 1990. While such plans are typically developed by engineers or architects, this is not a strict requirement for all 306A projects. However, for projects involving excavation, grading, or other changes to topography, shorelines, or hydrological features, or construction activities beyond minor improvements to existing structure or facilities, recipients are expected to submit a site plan prepared by a certified professional, such as a professional engineer or land surveyor.

#### **4.3.5 Title Opinion or Certification**

A title opinion, certification (or affidavit), or title insurance, demonstrating public ownership or control is required for most Section 306A construction projects (or other physical alteration) or any other type of Section 306A project which has a physical relationship to land, water or submerged lands, and for all land acquisition projects. The title document must be signed by a state or local government official or legal counsel

attesting that the property is in public ownership or control consistent with this Section 306A guidance. It is in the state's or local government's interest to ensure that a public entity has clear title to property proposed for Section 306A projects. In limited circumstances, where public ownership is clearly evident based on state law (e.g., submerged lands, beaches) or where recent NOAA investments have provided evidence of public ownership, OCM may offer flexibility and not require a signed title opinion. Other forms of objective evidence of public land ownership may be acceptable in such cases. See Appendix II for examples of a title opinion and certification. Title evidence that is required should be current, meaning no more than one year old.

#### **4.3.6 State/Tribal Historic Preservation Officer (SHPO/THPO) Clearance**

SHPO/THPO concurrence is required before work can commence on all Section 306A construction projects and before land can be purchased for all Section 306A acquisition projects. The concurrence can be obtained either through the use of a state coordination process or by virtue of NOAA working directly with the appropriate SHPO/THPO. Regardless of who initiates and completes the concurrence, it must be completed prior to project approval.

#### **4.3.7 Floodplain/Wetlands Notice**

Any state or federal notices regarding a Section 306A project on impacts to floodplains or wetlands will be retained by the state.

#### **4.3.8 Copies of Required Permits**

The state coastal management program will keep a record of any required local, state, tribal and federal permits for all Section 306A projects. Required local, state, tribal and federal permits must be obtained before work can commence on all Section 306A construction projects and before land can be purchased for all Section 306A acquisition projects.

#### **4.3.9 Description of Best Management Practices and Management Measures**

Please provide detailed information on the best management practices (BMPs) and other mitigation measures that will be used during project implementation. The planned use of best management practices is especially important with regard to protected species, sensitive habitats, artifacts and historic sites in carrying out construction activities, and best management practices that will be used to avoid introduction of invasive species and to control erosion or other non-point source pollution on site. The description should indicate whether management measures associated with CZMA section 6217 (or similar state BMPs) are being used during construction activities.

#### **4.3.10 Copies of Third-Party Easements**

Self-explanatory.

#### **4.3.11 Appraisal**

Before purchasing a piece of property with Section 306A funds, a state coastal management program must obtain an independent appraisal developed consistent with Uniform Standards of Professional Appraisal Practice (USPAP) or Yellow Book standards by a state approved appraiser to determine fair market value. Appraisals should be current, meaning no more than one year old. State coastal management programs will adhere to the following steps in negotiating acquisition price:

- i. Secure independent property appraisal;
- ii. Present appraisal to land owner and negotiate price based on appraisal. Property owner will be given a reasonable opportunity to consider the offer and present material which the owner believes to be relevant to determining the property's value;
- iii. If the property owner will not sell for the appraised price or lower, and the state wishes to pursue the acquisition, a second independent appraisal must be done, or the original appraisal updated to account for changed circumstances, e.g. extensive time passage, natural disaster, etc.; and
- iv. If, after negotiations and a second or revised first appraisal, the purchase price still exceeds the appraised value, the state may be allowed to pay more than the appraised value (with Section 306A funds) if the state demonstrates reasonable efforts to negotiate at the appraised value and if the state provides OCM with a written justification for the higher price, based on reasonableness, prudence, public interest, appraisals, estimated condemnation/trial costs, and/or valuation supports a settlement. OCM does not anticipate circumstances arising in which a purchase price would be approved that exceeds the appraised value by 10%.

#### **4.3.12 Legal Property Survey**

State coastal management programs should provide a land survey meeting all applicable state and local requirements for accuracy and sufficiency.

#### **4.3.13 Copy of Final Deed**

A copy of the final deed or conservation easement containing the required NOAA deed restriction.

#### **4.3.14 Contract for Purchase, Sale, or Option Agreement**

Self-explanatory.

#### **4.3.15 Willing Seller Letter**

See Appendix III for an example.

## **5 Special Award Conditions**

In addition to any other applicable terms, all NOAA Section 306/306A grants will contain the following special award conditions regarding Section 306A projects:

### **5.1 Title Encumbrances**

In the event that there are title discrepancies or encumbrances that NOAA deems interfere with the purpose for which the 306A funds were granted, or if NOAA determines that the project or property is no longer used for its original purpose, this may be deemed material noncompliance with award requirements for which costs may be disallowed in full or in part or other enforcement action taken by NOAA pursuant to 2 C.F.R. 200.338-.342.

### **5.2 Funding Restriction**

Federal funds are not permitted to be expended on any section 306A awards until NOAA/OCM reviews and approves the projects in conformance with NOAA Office of Coastal Management Section 306A Guidance and all related environmental compliance requirements. Specifically, no federal funds may be expended and no work is approved on a section 306A project until the state has submitted to OCM a complete Section 306A Project Questionnaire (and any other required information) for each section 306A project and NOAA approves. If, for any reason, a section 306A project ceases to be used as approved by NOAA, this action may be deemed material noncompliance with award requirements for which costs may be disallowed in full or in part or other enforcement action taken by NOAA pursuant to 2 C.F.R. 200.338-.342.

### **5.3 Project Signs**

The recipient must erect at the site of any construction project and maintain during the construction, signs satisfactory to the NOAA Office of Coastal Management that identify the project and indicate that the project is being funded under the Coastal Zone Management Act, by NOAA's Office for Coastal Management, in conjunction with the State Coastal Management Program. The recipient must also maintain a permanent plaque or sign at the project site with the same information.

## **Appendix I: Section 306a Questionnaire**

See separate file.

## Appendix II: Title Opinion and Certification Examples

### Title Opinion

Date: \_\_\_\_\_

Re: \_\_\_\_\_

Project Name on Section 306A Questionnaire

I hereby certify that I am a member in good standing of the bar of \_\_\_\_\_ (state) and have been requested to determine record ownership for the parcel(s) of property on which the above-referenced project will be constructed, \_\_\_\_\_ (name and brief description of land).

After thoroughly examining the public land records or other appropriate records in accordance with the laws of \_\_\_\_\_ (state), I hereby certify that record title to the parcel is held by \_\_\_\_\_ in (check one):

- Fee Simple Absolute
- Other (please specify)

I have determined that there are (check one):

- No easements or other encumbrances on the property.
- Easements or other encumbrances on the property that do not interfere with the proposed Section 306A project (list and explain below or in an attachment).
- Easements or other encumbrances on the property that interfere with the proposed Section 306A project (list and explain below or in an attachment).

Other Comments:

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Bar Number (must include)

Name: \_\_\_\_\_

Telephone: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**Title Opinion (Example)**

Date:

RE: Inlet Park Boardwalk

(Project Name on Section 306A Questionnaire)

I certify that I am a member in good standing of the bar of Maryland (state) and have been requested to determine record ownership for the parcel(s) of property on which the above-referenced project will be constructed, Inlet Boardwalk – along North Jetty at Ocean City Inlet (name and brief description of the parcel of land). After thoroughly examining the public land records or other appropriate records in accordance with the laws of Maryland (state), I hereby certify that record title to the parcel is held by U.S. Army Corps of Engineers/United States of America in (check one):

- Fee Simple Absolute
- Other (specify)

I have determined that there are (check one):

- No easements or other encumbrances on the property.
- Easements or other encumbrances on the property that do not interfere with the proposed Section 306A project (list and explain below or in an attachment).
- Easements or other encumbrances on the property that interfere with the proposed Section 306A project (list and explain below or in an attachment).

Other Comments:

Easement to Town of Ocean City for construction of Boardwalk.

\_\_\_\_\_  
Signature

XXXXXXXX\_\_\_\_\_  
Bar Number (must include)

Name: \_\_\_ Guy R. Ayres III \_\_\_\_\_  
Address: 5200 B. Coastal Highway  
Ocean City, MD 21842

Telephone: (XXX) XXX-XXXX

## Suggested Affidavit or Certification Form

I solemnly affirm upon personal knowledge that the following statements are true:

1. This affidavit or certification relates to the following property related to proposed financial assistance from the National Oceanic and Atmospheric Administration (insert address or description of property, and award or project number if known):
2. I, \_\_\_\_\_, (print name of official) being first and duly sworn state that:
3. Official must state what his/her title is and what authority he/she has to say that the property is publicly owned.
4. Official must state that the property is owned or leased by the state or local government (in accordance with OCM's CZMA Section 306A Guidance, **insert final date**) and that there are no encumbrances on the property that interfere with the proposed Section 306A project.

Signed: \_\_\_\_\_  
(Name of Official)

Subscribed and affirmed before me this day of (month), (year).

Notary Public

My Commission expires: \_\_\_\_\_

Note: this form should be revised in accordance with state law.

## Appendix III: Willing Seller Letter Examples

Dear [insert name of state coastal management program lead or NOAA representative]:

As the owner(s) of the [insert name or description] property], I/we submit this letter as evidence that I/we am/are willing participants in negotiations with [insert name of public entity] for the possible sale or donation of this property, or interests in property (easement), at mutually-agreeable terms for the purpose of long-term conservation.

I/we have been advised of the applicability of Public Law 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act (“the Uniform Act”), and I/we have been notified that the [insert name of public entity (the applicant)] will not pursue acquisition of the property through eminent domain (condemnation) in the event negotiations fail to result in an amicable agreement.

I understand that this letter will serve as evidence of a “willing seller,” signifying the current owner’s willingness to negotiate the possible sale of property as part of a voluntary transaction if negotiations result in an amicable agreement.

Sincerely,

\_\_\_\_\_  
[Name of Owner 1]

\_\_\_\_\_  
[Name of Owner 2]

### For matching share properties already acquired or donated

#### AFFIDAVIT

Dear [insert name of NOAA representative]:

On behalf of [public entity or qualified nongovernmental organization holding title for the purposes of the coastal management program 306A grant], I attest that the [insert name or description of property] was acquired on [insert date] through a voluntary transaction with a willing seller and did not result from the use, or threat of use, of a public entity’s authority to acquire property through eminent domain (condemnation).

Sincerely,

\_\_\_\_\_  
Authorized representative of public entity or qualified nongovernmental organization holding title for the purposes of the 306A grant

## **Appendix IV: NOAA's Extraordinary Circumstances for NEPA Review**

Before applying a Categorical Exclusion (CE), the decision-maker must consider whether the proposed action involves one or more of the following extraordinary circumstances.

- A. adverse effects on human health or safety that are not negligible or discountable;
- B. adverse effects on an area with unique environmental characteristics (e.g., wetlands and floodplains, national marine sanctuaries, or marine national monuments) that are not negligible or discountable;
- C. adverse effects on species or habitats protected by the ESA, the MMPA, the MSA, NMSA, or the Migratory Bird Treaty Act that are not negligible or discountable;
- D. the potential to generate, use, store, transport, or dispose of hazardous or toxic substances, in a manner that may have a significant effect on the environment;
- E. adverse effects on properties listed or eligible for listing on the National Register of Historic Places authorized by the National Historic Preservation Act of 1966, National Historic Landmarks designated by the Secretary of the Interior, or National Monuments designated through the Antiquities Act of 1906; federally recognized tribal and Native Alaskan lands, cultural or natural resources, or religious or cultural sites that cannot be resolved through applicable regulatory processes;
- F. a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities (EO 12898);
- G. contribution to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species;
- H. a potential violation of federal, state, or local law or requirements imposed for protection of the environment;
- I. highly controversial environmental effects;
- J. the potential to establish a precedent for future action or an action that represents a decision in principle about future actions with potentially significant environmental effects;
- K. environmental effects that are uncertain, unique, or unknown; or
- L. the potential for significant cumulative impacts when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves.

## Appendix V: Example of NOAA’s Use of Categorical Exclusion

Below is an example scenario to demonstrate how NOAA would apply the Categorical Exclusions to a potential Section 306A Project.

NOAA’s current list of CEs is located in NOAA’s NEPA Companion Manual, found here: <http://www.nepa.noaa.gov/docs/NOAA-HQ-2016-0145%20NAO%20216-6A%20Companion%20Manual.pdf>.

Below is an example scenario to demonstrate how NOAA would apply the Categorical Exclusions to a potential 306A project.

State X proposes small-scale construction of a fishing pier off their coast. NOAA would first ensure that an extraordinary circumstance does not preclude use of the NOAA CEs (see Appendix III). If not, NOAA will identify which CE applies for this project. When considering a potential fishing pier, F3 would apply below. This particular CE includes three distinct scenarios (a-c) and each has its own specific parameters under which it can be used. A fishing pier is considered a “public access facility or infrastructure,” so NOAA would review the project to ensure it is small-scale<sup>1</sup> and non-destructive<sup>2</sup>; and consistent with the applicable right-of-way conditions and approved land use plans. Based on the information and context provided within the application and the 306A Questionnaire, NOAA will determine whether the conditions are satisfied and the CE may be applied.

[F3] (a) Routine repair, maintenance, and improvement of real and personal property, where such activities are required to maintain and preserve buildings, structures, infrastructures, vehicles, and equipment in a condition suitable to be used for its designed purpose.

(b) New construction, expansion and/or improvement of facilities where all of the following conditions are met:

(1) The site is in a developed area and/or a previously disturbed site;

(2) The structure and proposed use are compatible with applicable federal, tribal, state, and local planning and zoning standards and consistent with federally approved state

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<sup>1</sup> Minor or small-scale – these are terms NOAA considers in the context of the particular proposal, including its proposed location. In assessing whether the scope of a proposed action is small, in addition to the actual magnitude of the proposal, NOAA considers factors such as industry norms and the relationship of the proposed action to similar types of development or activity in the vicinity of the proposed action. When considering the size of a proposed facility, for example, NOAA would review the surrounding land uses, the scale of the proposed action relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action. When these limiting terms are used within a specific CE, the administrative record for that CE provides further explanation of their meaning in the context of the activity addressed by that CE.

<sup>2</sup> Nondestructive – this term refers to actions that do not result in permanent physical alteration of a component of the human environment. Passive acoustics, ground penetrating radar, and air quality sampling are examples of nondestructive methods to collect environmental data.

coastal management programs and the National Historic Preservation Act;

(3) The proposed use will not substantially increase the number of motor vehicles, marine vessels, or aircraft at the facility or in the area;

(4) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings;

(5) The construction or improvement will not result in uses that exceed existing infrastructure capacities (e.g., electrical, roads, sewer, water, parking);

(6) The construction or improvement will not result in operational uses that adversely affect the surrounding community (e.g., noise); and

(7) The community-valued view sheds are not adversely affected.

(c) Installation, repair, maintenance, and enhancement of public access facilities and infrastructure, if the activity:

(1) Is small-scale and nondestructive; and

(2) Is consistent with applicable right-of-way conditions and approved land use plans.

## Appendix VI: Definitions

**Cumulative Effects:** The incremental environmental impact or effect of the proposed action, together with impacts of past, present, and reasonably foreseeable future actions, regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7).

**Negligible:** This term refers to a level of impact that is below minor to the point of being barely detectable and therefore discountable. Factors for consideration include: procedures that employ generally accepted industry standards or best management practices that have been tested and verified at the time an activity is proposed; whether an activity has understood or well-documented impacts at the time an activity is proposed; whether control and quality measures are in place (e.g., monitoring and verification; emergency plans and preparedness); the direct, indirect, and cumulative effects of the proposed activity on a resource; and the context and intensity of expected discharges or deposits and disturbances to resources, like the submerged lands of any marine protected area, corals, and other living, cultural, and historical resources.

**Ongoing Projects:** Projects that continue over a period of years that are largely unchanged from year to year.

**Phased Projects:** Large projects that are broken into individual components so as to facilitate funding. For the purposes of NEPA review, phased projects are equivalent to segmentation if each segment is “connected.” Actions are connected if they:

- (i) Automatically trigger other actions which may require environmental impact statements.
- (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
- (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

**Previously disturbed ground:** This term refers to land that has been changed such that its functioning ecological processes have been and remain substantially altered by human activity. The term encompasses areas that have been transformed from natural cover to non-native species or a developed state, including but not limited to, utility and electrical power transmission corridors and rights-of-way, paved and unpaved roads, and construction footprints.

**Segmentation:** Segmentation can occur when an action is broken down into small parts in order to avoid preparing an EA or EIS for total action. *Delaware Riverkeeper Network v. F.E.R.C.*, 753 F.3d 1304, 1313 (D.C. Cir. 2014). See also *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976)

**Unique habitats or characteristics:** Habitats or characteristics of specific places that are uncommon, contain rare species or resources, or sites afforded special protections. These areas may include, but are not limited to tidal wetlands and floodplains, National Marine Sanctuaries, and wildlife management areas.

**Unique resources or geographic areas:** Are resources or locations that include areas of notable recreational, ecological, scientific, cultural, historical, scenic, or aesthetic importance. Examples of unique resources and geographic areas include, but are not limited to: coral reefs; marine protected areas; National Marine Sanctuaries; essential fish habitat; habitat area of particular concern; critical habitat designated under the Endangered Species Act or Magnuson Stevens; park or refuge lands; wild or scenic rivers; wetlands; prime or unique farmland; sites listed on the National Register of Natural Landmarks; sites listed or eligible for the National Register of Historic Places; tribal lands; sites that are ecologically significant or critical areas including areas that are normally inundated by water or areas within the 100-year floodplain.

**Viewshed:** An area that is visible from a specific location. For purposes of environmental impact documentation for 306A projects, any visual changes from construction or restoration activities that might impact viewers of the project area related to lighting, height, size, location, alignment, and use of the facility or structure.